



Setti D. Warren  
Mayor

## CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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Public Hearing Date:	February 9, 2010
Land Use Action Date:	April 20, 2010
Board of Aldermen Action Date:	May 3, 2010
90-Day Expiration Date:	May 10, 2010

DATE: February 5, 2010

TO: Board of Aldermen

FROM: Candace Havens, Acting Director of Planning and Development  
Benjamin Solomon-Schwartz, Senior Planner

SUBJECT: #16-10 DIKRAN PANOSSIAN petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND a NONCONFORMING USE to legalize a 13th apartment (unit 1-H) in an existing legal nonconforming 12 unit multi-family dwelling, including a waiver of two parking spaces, at 548 CENTRE STREET/48 HOLLIS STREET, Ward .1, NEWTON CORNER, on land known as Sec 72, Blk 6, Lot 14A, containing approx 15,320 sf of land in a district zoned MULTI RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-21(a)(2)a), 30-21(b), 3-19(d) and (m) of the City of Newton Rev Zoning Ord, 2007 and special permit #2-85.

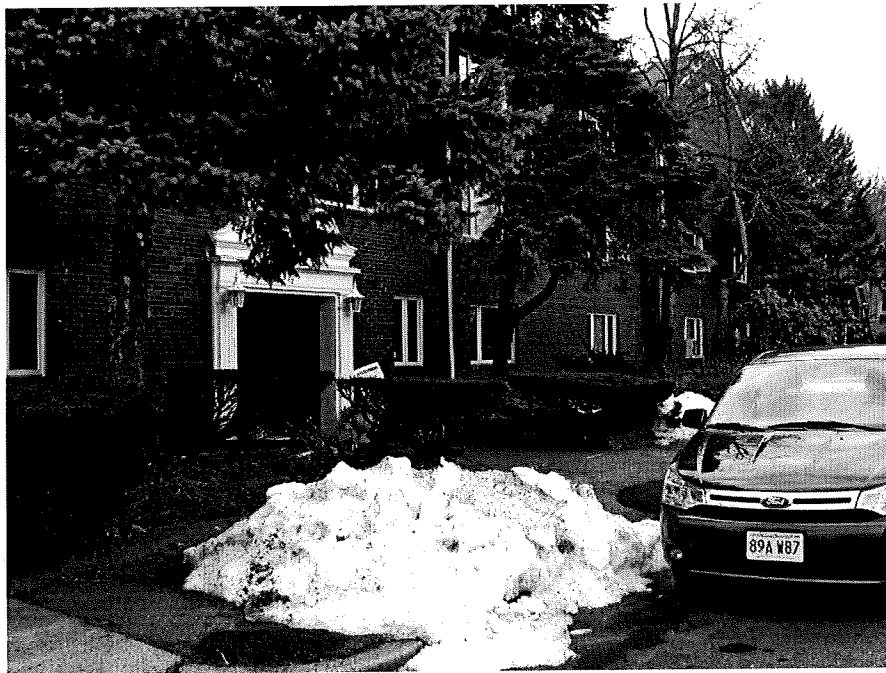
CC: Mayor Setti D. Warren

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



### **EXECUTIVE SUMMARY**

The petitioner seeks to divide one unit in the 12-unit legal nonconforming building on this site, creating one additional unit (13 total units). For over twenty years, the unit in question has been illegally rented as two units, across a common hallway from each other. The petitioner now seeks to legalize this situation in order to sell the units separately. The petitioner does not propose any interior or exterior changes to the building or the site. Because the petitioner does not propose to add any parking stalls, the petitioner seeks a waiver from the requirement to provide two stalls for an additional unit.



*Views of condominium from Hollis Street (above) and Centre Street (below)*

## I. SIGNIFICANT ISSUES FOR CONSIDERATION

When considering this request, the Board should consider whether the following findings apply:

- ◆ The extension of the nonconforming use will not be more detrimental than the existing use
- ◆ The granting of a waiver for two parking stalls will not have adverse affects on parking, traffic, and circulation in the Newton Corner commercial district or residential neighborhood.

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The property is located on Centre Street in Newton Corner, several blocks south of the Mass. Pike. It is located within a Multi-Residence 3 district (*SEE ATTACHMENTS "A" AND "B"*). There area variety of residential buildings in the immediate neighborhood, including multi-family buildings, single-family residences, and two-family residences.

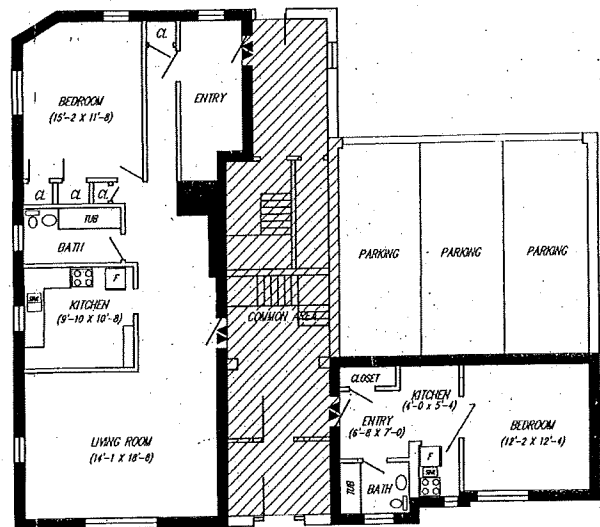
### B. Site

The 15,320 sq. ft. site currently contains one 12-unit apartment building. The building is a three-story brick building with parking located in the rear.

## III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

In March 1985, the Board of Aldermen approved a special permit (Board Order #2-85) to expand the nonconforming use of the site and allow one additional dwelling unit for a total of thirteen (13) dwelling units. The Board Order also contained a condition that "[t]he petitioner shall offer the basement studio dwelling unit [the 13th unit subject to the current application] for sale to the City of Newton" for use by the Newton Housing Authority as an affordable housing unit. The Board Order was never recorded at



UNIT 1-H - 1ST FLOOR  
AREA = 930± S.F.

UNIT A-H - 1ST FLOOR  
AREA = 315± S.F.

the Registry of Deeds, nor did the owner at the time abide by the condition imposed on the 13th unit. The illegal 13th unit has been maintained over the ensuing 20 years. The combined two units have been sold together several times, most recently to the petitioner.

The subject studio apartment was sold as part of Unit 1-H and was marketed as “two units in one” because Unit 1-H is split into two separate and distinct dwelling units by a common hallway (itself a building code violation) with each side containing its own kitchen and bathroom. According to the applicant, this illegal situation has existed since the mid-1980s when the units in the building were sold individually as 12 condominiums (at the same approximate time as Board Order #2-85 was issued).

The subject application is an attempt to legalize the 13th unit so that the current owner can sell it separate from the rest of Unit 1-H across the common hallway. The Planning Department has encouraged the petitioner to investigate selling unit A-H to the owner of the adjacent unit (not across a hallway) to merge them into one larger unit. The petitioner chose not to pursue that route.

Earlier in the application process, the petitioner offered to sell the smaller unit to the Newton Housing Authority or to place an affordability restriction on it. After investigating those options, it appears that Housing Authority is not interested in acquiring the unit and the costs of the City monitoring an affordability restriction for a single small unit would exceed the benefits of the restriction.

B. Building and Site Design

The site contains an existing three-story apartment building with parking in the rear. The petitioner proposes no exterior changes to the building or to the site design.

C. Parking and Circulation

The petitioner proposes no changes to the parking or circulation on site. The petitioner has requested a waiver of the two parking spaces required for the addition of a thirteenth unit to the condominium building, noting that the occupants of the existing illegal apartment have been parking on the street in the neighborhood and argue that the legalization of the unit will not alter the parking demand in the neighborhood. *The petitioner should provide evidence that the legalization of one unit in the building would not be detrimental to the neighborhood because of its impact on available street parking. In addition, the Planning Department recommends the installation of a secure indoor bike rack in the building to encourage the use of alternative modes of transportation by the occupants of the building.*

D. Landscape Screening and Lighting

The petitioner does not propose any changes to landscaping or lighting because they have not proposed any exterior changes to the building or the site plan.

IV. COMPREHENSIVE PLAN

The 2007 *Newton Comprehensive Plan* says that “development is to be guided to reflect the character held or sought by existing residential neighborhoods, protecting the qualities of that which exists.” The addition of one unit to the existing condominium apartment building without any exterior changes to the building would not negatively impact the character of the neighborhood.

V. TECHNICAL REVIEW

- A. Technical Considerations (Section 30-15). The Zoning Review Memorandum, dated December 14, 2009 provides an analysis of the proposal with regard to Section 30-15 Tables 1. A special permit is required to add an additional unit to the existing 12-unit apartment building.
- B. Parking Requirements (Section 30-19). The Zoning Review Memorandum provides an analysis of the proposal with regard to Section 30-19. A special permit is required to waive two parking stalls.
- C. Other Reviews. Neither engineering review nor fire access review is required for this petition because no changes are proposed to the site plan or the exterior of the existing building.

VI. ZONING RELIEFS SOUGHT

Based on the completed zoning review, dated December 14, 2009 (*SEE ATTACHMENT “C”*), the petitioner is seeking approval through or relief from:

- Section 30-21(a) and (b), to expand a nonconforming use
- Section 30-19(d) and (m), to waive two required parking spaces
- Section 30-23, for approval of proposed site plan
- Section 30-24(d), for approval of special permit

VII. Summary of Petitioner’s Responsibilities

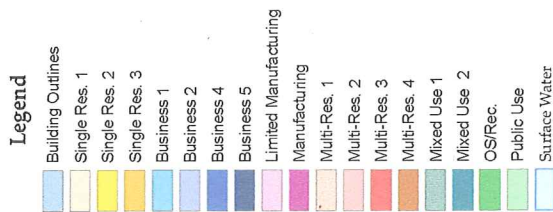
Prior to the Working Session, the petitioner should provide evidence that the legalization of one unit in the building would not be detrimental to the neighborhood because of its impact on available street parking.

**ATTACHMENTS**

**ATTACHMENT A:**     *Zoning Map*  
**ATTACHMENT B:**     *Land Use Map*  
**ATTACHMENT C:**     *Zoning Review Memorandum, dated December 14, 2009*



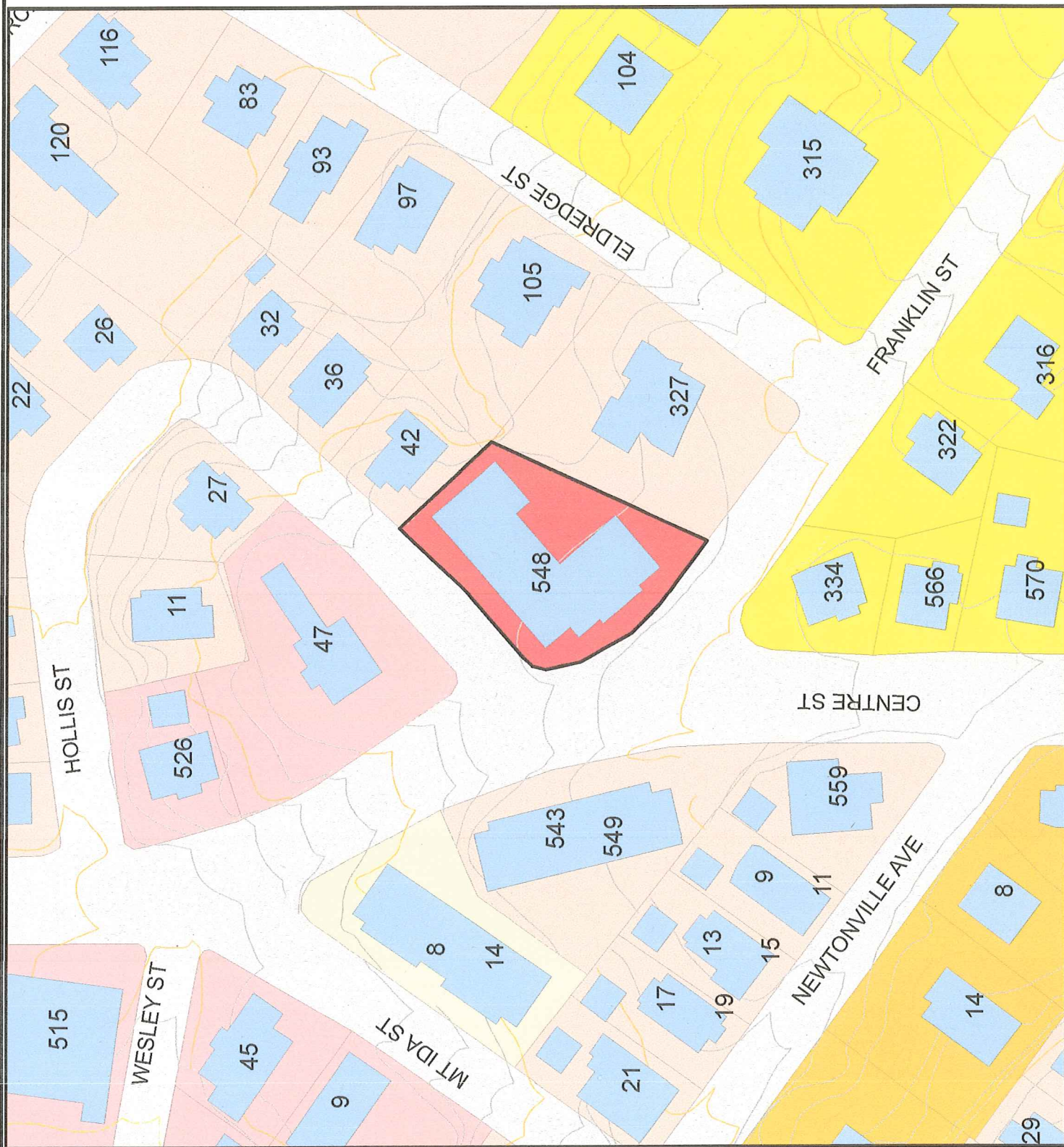
**548 Centre St.  
(48 Hollis St.)  
and Vicinity**  
*City of Newton,  
Massachusetts*

City of Newton,  
Massachusetts

The information on the Geographic Information System cannot guarantee the accuracy of the information. Each user is responsible for determining its suitability for a particular purpose. City departments are not required to approve applications.



MAP DATE:





# Land Use Map

**548 Centre St.  
(48 Hollis St.)  
and Vicinity**  
City of Newton,  
Massachusetts

## Legend

- Building Outlines
- Single Family Residential
- Two Family Residential
- Condominiums
- Other Residential
- Mixed Use
- Commercial
- Industrial
- Vacant Land
- Golf Course
- Open Space
- Private Educational
- Nonprofit Organizations
- Public Housing
- Tax Exempt
- Unspecified
- Surface Water



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MAP DATE:



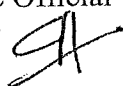


## Zoning Review Memorandum

ATTACHMENT C

Dt: December 14, 2009

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official  
Candace Havens, Chief Planner 

Cc: Michael Kruse, Director, Department of Planning and Development  
Attorney Sam Shiro, representing Dikran Panossian  
Ouida Young, Associate City Solicitor

RE: Request to allow a 13<sup>th</sup> dwelling unit in a multi-family structure.

Applicant: Dikran Panossian	
Site: 48 Hollis Street, Unit 1-H	SBL: Section 72, Block 6, Lot 14A
Zoning: MR-3	Lot Area: 15,320 square feet
Current use: Multi-family residence with 12 units	Proposed use: Multi-family residence with 13 units

### **Background:**

The subject property consists of a 15,320 square foot lot currently improved with a legal nonconforming multi-family dwelling. In July 1984, then-Senior Building Inspector Paul Foley confirmed in a letter that there was a "valid, twelve (12) unit apartment building...at 548 Centre, 48 Hollis Street, Newton and that a special permit from the Board of Aldermen [was] not required." However, an illegal 13<sup>th</sup> unit also existed at the time, which was not included in this determination of the building's legal nonconforming status.

In March 1985, the Board of Aldermen approved a special permit (Board Order #2-85) to expand the nonconforming use of the site and allow one additional dwelling unit for a total of thirteen (13) apartment units. The Board Order also contained a condition that "[t]he petitioner shall offer the basement studio dwelling unit [the 13<sup>th</sup> unit subject to the current application] for sale to the City of Newton" for use by the Newton Housing Authority as an affordable housing unit. The Board Order was never recorded at the Registry of Deeds, nor did the owner at the time abide by the condition imposed on the 13<sup>th</sup> unit. The illegal 13<sup>th</sup> unit continued to exist and was sold several times over the ensuing 20+ years, most recently to the current applicant, Mr. Panossian.

The subject studio apartment was sold as part of Unit 1-H and was marketed as "two units in one" because Unit 1-H is split into two separate and distinct dwelling units by a common hallway (a building code violation in and of itself) with each side containing its own kitchen and bathroom. According to the applicant, this illegal situation has existed since the mid-1980s when the units in the building were sold individually as 12 condominiums (at approximately the same time as Board Order #2-85 was issued).

The subject application is an attempt to finally legalize the 13<sup>th</sup> unit so that the current owner can sell it separate from the rest of Unit 1-H across the common hallway. This zoning review memo is the first step in that process.

**Administrative determinations:**

1. The property is in the MR-3 zone and must comply with the dimensional standards of Section 30-15, Table 1 for a pre-1953 lot (see chart below).

MR-3 Zone	Required/Allowed	Existing	Proposed
Lot size	7,000 sq. ft. (by right 1- or 2-family) 10,000 (with Special Permit)	15,320 sq. ft.	No change
Lot size per unit	3,500 sq. ft. (by right) 1,200 sq. ft. (with special permit)	1,276 sq. ft.	1,179 sq. ft.
Frontage	70 feet	N/A <sup>1</sup>	No change
Setbacks			
• Front	15 feet	N/A <sup>1</sup>	No change
• Side	7.5 feet	N/A <sup>1</sup>	No change
• Rear	15 feet	N/A <sup>1</sup>	No change
FAR	.4	N/A <sup>1</sup>	No change
Building Height of addition	30 feet	N/A <sup>1</sup>	No change
Maximum Stories	2.5	N/A <sup>1</sup>	No change
Max. Lot Coverage	30%	N/A <sup>1</sup>	No change
Min. Open Space	50%	N/A <sup>1</sup>	No change

<sup>1</sup> This figure was not supplied by the applicant, but it is not necessary for this review since the applicant does not propose any change to the existing building.

2. The applicant is proposing to legalize a 13<sup>th</sup> apartment in an existing legal nonconforming 12-unit multi-family dwelling. This is permitted with the approval of a special permit from the Board of Aldermen to expand a nonconforming use under Sections 30-21(a)(2)(a) and 30-21(b).
3. Section 30-19(d)(2) requires two parking spaces for each dwelling unit in an apartment house. A site plan for the property dated July 27, 1984 shows a total of thirteen parking spaces. These spaces are sufficient for the 12 units that were determined to be legal nonconforming, since the parking was established along with the building before there were parking requirements and dimensional standards in the City. However, adding a 13<sup>th</sup> unit now would require two additional parking spaces for a total of 15 spaces on-site. Providing these spaces on-site appears to be impossible given the current site layout. Therefore, the applicant must obtain a special permit from the Board of Aldermen under Section 30-19(m) to waive the two additional required spaces.
4. The applicant submitted a copy of the Master Deed for the condominium association (Holliscentre Condominium) that states that the owner of Unit 1-H has "the right to subdivide Unit 1-H and create an additional Unit to be known as Unit A-H." Of course, the Master Deed is silent on the fact that significant City approvals are needed to accomplish this so-called subdivision. It is also important to note, that if a special permit is granted and exercised, its conditions and restrictions are placed on the entire site, not just the subject dwelling unit and are tied to the land in perpetuity. Therefore, at the very least, the condominium association should sign the special permit application for this project as a co-applicant to ensure that each individual condominium owner is aware of the situation.

5. See "Zoning Relief Summary" below:

<b>Zoning Relief Summary</b>		
<b>Ordinance</b>	<b>Site</b>	<b>Action Required</b>
§30-21(a)(2)(a), §30-21(b)	Expand a nonconforming use	SP per §30-24
§30-19(d), §30-19(m)	Waive two required parking spaces	SP per §30-24

Plans and materials reviewed:

- Letter from Robert L. Shulman to Paul Foley dated July 16, 1984 regarding the number of legal nonconforming dwelling units that existed on the site at the time.
- Letter from Paul E. Foley to Robert L. Shulman, Esq. dated July 26, 1984 confirming that there were 12 legal nonconforming units on the site at that time.
- Master Deed for the Holliscentre Condominium
- Architectural floor plan "First Floor Master Deed, Holliscentre Condominiums, 548 Centre St. & 48 Hollis St., Newton, MA," drawn by Ahearn-Schopfer and Associates, P.C., dated 1-11-85, signed and stamped (both illegible on this copy)
- "Holliscentre Condominium in Newton, MA, Units 1-H/A-H, 48 Hollis Street," dated September 14, 2005, neither signed nor stamped by a licensed professional
- Letter from Lawrence W. DeCelle Jr. to Samuel D. Shiro, Esquire
- "Plan of Land, No. 548 Centre Street Condominium, Newton, Mass, dated July 27, 1984, signed and stamped by Robert G. Applegate, Registered Land Surveyor